Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

October Term, 2000

GEORGE R. "TEX" WOOD,
Petitioner

vs.

CAMERON QUINN, Secretary of the Virginia State Board of Elections,
Respondent.

On Petition for Writ Of Certiorari to the United States Court Of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

George R. "Tex" Wood
P.O. Box 195
Woolwine, Va. 24185
(540) 930 2383, (304) 792 7098, ext. 275

QUESTIONS PRESENTED FOR REVIEW

Preface

No *bona fide* independent has ever made the ballot for U.S. Senate in Virginia (nor for Governor, Lt. Governor, or Attorney General, coming up in Nov. 2001). In 2000, 31 of the 33 U.S. Senate races had alternatives on the ballot, but not Virginia. No state has ever had such convoluted, confusing, and whimsical restrictions. The lower courts did not consider the case against new codes on its merits, nor did they examine the new codes in light of the First and Fourteenth Amendments to the U.S. Constitution.

1. Whether a unique Virginia ballot access code, Va. Code 24.2-506 (1) (App. at 22a)(see also Va. Code 24.2-507 [1], App at 23a) can require a potential independent candidate to do something and at the same time prohibit him or her from doing it, having the practical effect of limiting all Virginia voters' First Amendment right to freedom of association by herding them all into the two major parties.

2. Whether granting un-equal rights to Virginia residents according to geographic location in statewide elections is violative of the Equal Rights Clause of the Fourteenth Amendment of the United States Constitution, *Bush v. Gore* ___U.S. ___00949.

3. Whether an error claiming falsely that a case had *ruled* on (then upheld) a code that did not even exist until 13 years later, then using that case as the controlling case, constitutes reversible error.

4. Whether *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Cromer v. South Carolina*, 917 F.2nd 819 (4th Cir. 1990) still apply and mean state ballot access restrictions cannot treat un-equal things as if they are equal or be more onerous for independents.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all parties.

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Petitioner, George R. Wood, an individual and representative Virginia voter who sought access to the ballot for U.S. Senate, respectfully prays that this Court issue a Writ of *Certiorari* to review the judgment of the United States Court of Appeals for the Fourth Circuit entered September 8, 2000.

OPINIONS BELOW

The Order of the United State Court of Appeals for the Fourth Circuit (Sept. 8, 2000,) springs from *Wood v. Quinn*, No. CA-00-335-3: E.D. Va. July 17, 2000, set forth in App. at 2a . The U.S. Court of Appeals for the Fourth Circuit denied a Petition for Rehearing and Petition for Rehearing *En Banc* October 17, 2000, set forth in App. at 4a. (Un-published, *per curiam* opinion.)

All U.S. Court of Appeals for the Fourth Circuit Orders are in the Appendix. The decisions of the United States District Court for the Eastern District of Virginia are docketed as Civil Action No.00-335-3. Those Orders are in the appendix.

JURISDICTIONAL GROUNDS

This Court has jurisdiction under 28 U.S.C. 1254(1) to review the decision of the Fourth Circuit of Appeals. The Fourth Circuit rendered its decision on Sept. 8, 2000, (App. at 3a), and denied the petition for rehearing on Oct. 17, 2000 (App. at 4a). Pursuant to Supreme Court Rule 13.3, this petition was timely filed within 90 days from the date of the denial of the Petition for Rehearing. In accordance with Rule 29.3 and 4(c).

Petitioner served by pre-paid mail notification of this petition questioning the constitutionality of the

Virginia codes to the Commonwealth of Virginia's Attorney General's office, counsel for the Respondent.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner relies on the First and Fourteenth Amendments to the United States Constitution to challenge the Sept. 8, 2000, 4th Circuit decision and further to challenge Virginia Codes 24.2-506 and 24.2-507 App. at 22a & 23a).. Petitioner respectfully refers the Court to the Appendix materials.

CONCISE STATEMENT OF THE CASE

Petitioner George R. "Tex" Wood (herein "Wood") turned in, according to the Virginia Board of Elections, 17,532 ballot access petition signatures on June 13, 2000, the early deadline currently required by Va. Code 24.2-507. (10,000 are required.)

The lower court rulings depart from the accepted and usual course of judicial proceedings, sanction such departures, and ignore or run contrary to precedence set in *Anderson v. Celebreeze*, 460 U.S. 780 (1983); *Cromer v. South Carolina*, 917 F 2nd 819(4th Cir. 1990); *U.S. Term Limits v. Thorten*, 115 S. Ct. 1842 (1995); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Reynolds v. Sims*, 377 U.S. at 555, 565 (1965); *Board of Estimates v. Morris*, 498 U.S. 23 (1989); *Bradley v. Mandel*, 432 U.S. 173 (1977); *Bullock v. Carter*, 405 U.S. 134 (1972); *Norman v. Reed*, 502 U.S.___, 112 S. Ct. 698 (1992); *McCarthy v. Brisco*, 429 U.S. 1317 (1976); *Reagan v. State of Kansas*, U.S. District Court, Kansas, not reported; *Fulani v. League of Women Voters*, 882 F 2nd 621, 2nd Cir (1989); *McInerney v. Wrightson*, 421 Supp 726 (1976; *Buckley v. American Constitutional Law*

Foundation, 119 U.S. 636, 525; *Storer v. Brown*, 415 U.S. 724 94f CT 1274 (1974); the First Amendment to the U.S. Constitution; and the Fourth Amendment to the U.S. Constitution. Non-compliance with *Buckley* knocks the foundation from under Virginia's entire petition collection scheme, anyway (see Va. Code 24.2-506(1) App at 24a).

On May 26, 2000, Wood filed in the U.S. District Court for the Eastern District of Virginia, Richmond Division, a Motion for Preliminary Injunction and a Complaint for Declaratory and Injunctive Relief, both denied on June 22, 2000, by Judge James R. Spencer (App. at 1a). On June 22, 2000, Wood filed a cross Motion for Summary Judgment, denied by Judge Spencer on July 17, 2000 (App. at 2a), relying on *Libertarian Party v. Davis*, 766 F. 2nd 865 (4th Cir. 1985).

Under Virginia codes existing when *Libertarian Party v. Davis*, 766 F.2nd 865 (4th Cir. 1985) was decided, Wood would have been on the ballot for U.S. Senate in Virginia, his having met all the criteria set forth in the codes upheld in *Davis* in 1985.

Since then, significant changes have been made in the Virginia codes, one in 1993 yet to be reviewed and another in 1998 yet to be reviewed. The issues and questions of first impression have been ignored by the lower courts. Case law was mis-read, then mis-applied. Although Virginia requires an independent to collect signatures in each Congressional District, Virginia's new code (yet to be reviewed) does not allow the potential candidate or any of his petitioners to collect signatures in all and each of the eleven Congressional districts, even though the office is a statewide office.

Succinctly, the change in 1998 doubled the

requirement that an independent petitioner for U.S. Senate (a statewide office) collect 200 signatures from each of the eleven Congressional Districts to 400, when *no bona* fide independent had ever even satisfied the 200 requirement. No flood gate was needed. There had not even been a trickle. No other state has ever had such a ballot access restriction.

An independent potential candidate (and his supporters) can collect signatures only in his or her own Congressional District or in those contiguous to his or her own Congressional District. No Congressional District is contiguous to all Congressional Districts, creating a stark imbalance of the number of Congressional Districts available to the citizens of Virginia in which to collect signatures.

For example, a voter or potential candidate or supporter in the western most district can collect in a total of only three Congressional Districts, but one in a more central Congressional District (like the 7th Congressional District) can collect in seven different districts, giving the latter a huge, compelling advantage over some potential independent candidate in the western most Congressional District.

Prior to 1983, potential independent candidates for a statewide office could gather petitions anywhere in the state (citation: Virginia General Assembly, 1982 Session Laws, Chapter 650, Pages 1205-1208).

Not only does the Virginia Code in question disadvantage voters in outlying Congressional districts, it also grants *veto power by one voter* in any Congressional District over the expressed wishes of all those others across the state who had a chance to sign and did sign a petition for an independent to be placed on the U.S. Senate ballot.

In the case at hand, the petitioner (both to this Court and as a potential U.S. Senate candidate) turned in 17,532 signatures, including over 200 (pre-1998 requirement) from each Congressional District, but because he was just shy of 400 from two of those Congressional Districts, the wishes of 17,532 Virginia voters (only 10,000 total signatures are required) were thwarted, and Wood was denied a place on the ballot. Under the Codes examined in *Davis*, Wood would have been on the ballot,

An independent under the Virginia Code in question could collect a zillion signatures in 10 of the 11 Congressional Districts, but should one voter in the other Congressional district either not sign or not have opportunity to sign the petition, all the expressed wishes of all the other voters who signed the petitions are rendered worthless... hardly equal protection.

In real numbers, 3,429,674 Virginia voters could sign petitions to put an independent on the ballot for U.S. Senate, and one voter in one district could either not have an opportunity to sign or decline to, and the wishes of 3,429,674 Virginia voters are negated by one voter, hardly equal protection under the law.

Virginia contends that a potential independent candidate for statewide office must show support from all across the state, but denies him or her the opportunity to collect signatures from all over the state.

Besides, the petition form provided by Virginia states prominently and clearly that signing a petition does not indicate an intention to vote for the petitioner, so the petition signatures the state contends show support in fact do nothing of the sort at all.

No Democrat or Republican candidate for the U.S. Senate is required to garner a certain number of votes per

Congressional District in order to win the election. No legitimate state interest exists to require an independent petitioner to garner signatures from each Congressional District just to get on the ballot itself when a candidate can win the election without a single vote from some Congressional Districts.

Congressional Districts are proportioned by population, not by population of registered voters. According to public records published by the Virginia State Board of Elections, on January 1, 2000, the 10th Congressional District had 430,000 registered voters, but the 2nd Congressional District only had 292,000 registered voters. That 138,000 difference in the number of voters between just two districts is ample to swing a statewide election. A potential independent candidate couldn't collect in both those districts anyway, unless he or she is from the First Congressional District.

Thirty one of the 33 states having U.S. Senate elections in 2000 had alternatives on the ballot, and their election processes are not in chaos or turmoil. Even West Virginia had an alternative on the ballot for U.S. Senate!. Virginia has never had a *bona fide* independent on the ballot for U.S. Senate. Even former Democrat Governor Doug Wilder and Former Republican Attorney General Marshall Coleman had to buy (public FEC records) the necessary signatures to meet the early June deadline (five months before the general election) for some $70,000, a rather prohibitive, *de facto* filing fee.

Historic record shows that if a Virginian wants to vote for a U.S. Senate candidate or to be one, he or she has to be a member of one of the two major parties, period. Herding all Virginians into the two major parties by the two major parties *via* their own Codes transgresses the freedom of association guaranteed by the freedom of association

section of the First Amendment to the U.S. Constitution.

While there is certainly an understandable partisan interest in the Codes in question, there is no legitimate state interest, and this herding takes place five months before the general election.

While Wood suspects that stupidity is not un-Constitutional, he contends that the absurdity of requiring someone to do something, then prohibiting him or her from doing it, in this case, violates both the First and Fourteenth Amendments to the U.S. Constitution.

Although no other state has ever had such a ballot restriction (so there is no salient inter-Circuit conflict), the code in question does run contrary to precedent as well as to the afore mentioned Amendments.

The district court erred in its opinion (App. at 13a) when it stated, "The Fourth Circuit upheld the 10,000-signature requirement specifically in *Libertarian Party v. Davis,...*". The 10,000 figure did not even come into existence, much less under any court review, until 13 years after *Davis*.

An additional indication of just how closely the district court examined this case is found in the fact it did not even get the plaintiff's name correct, adding an *s* to his name.

The change in who can and cannot collect where in a statewide election did not even come into being until 1993, eight years after *Davis* and doubling the requirements reviewed in *Davis* without reason in a whimsical, arbitrary, and capricious manner.

Davis did not examine (because they did not exist) the un-equal distribution of rights and privileges under the new code, so Davis *had* no question of First and Fourteenth Amendment rights to consider.

The district court also noted (App. at 11a) in its opinion,

> "As noted in *Clements* [457 U.S. at 965-66] ballot access restrictions may fail even under rational basis scrutiny if those restrictions make it 'virtually impossible' for an independent candidate to appear on the ballot."

Zero independents had ever made the U.S. Senate ballot under what was examined under *Davis*, and zero independents have ever made the U.S. Senate ballot under the new, harsher codes, enacted (and never reviewed) since *Davis*. How much more "impossible" can something become? Besides, strict scrutiny usually applies to Constitutional questions.

The district court's opinion (App. at 12a) said, "The Supreme Court stated powerfully in *Lubin v. Panish* that a state's interest 'in keeping its ballot within manageable, understandable limits is of the highest order.'" *Lubin v. Panish*, 415 U.S. 709, 714-715 (1974). *Manageable* and *understandable* in Virginia, as historic facts demonstrate, mean always only two U.S. Senate candidates, and always only a Democrat and a Republican, and never an independent. Always...and five months before the general election.

In 2000, 31 of 33 states having U.S. Senate elections had an alternative on the ballot. But not Virginia. Never Virginia. *Lubin* concerned the number of signatures, anyway, and Wood has never argued against any number. He turned in 17,532, 175% of the 10,000 requirement and 2,532 more than the old *Davis* requirement.

Anderson v. Celebrezze 460 U.S. 780 (1983) clearly establishes that treating un-equal things as of they are equal is not permissible. The Fourth Circuit's own

Cromer v. South Carolina 917 F.2nd 819 (4th Cir.1990) used *Anderson* in placing the deadline for independent petitions 75 days before the general election. Virginia sticks with a deadline of 150 days, twice what the Fourth Circuit itself ruled was just.

The only thing the district court did was to state the obvious, that an independent petitioner for a place on the U.S. Senate ballot can't collect statewide; he has to finds surrogates! (Bring on Brad Pitt and Heather Locklear!) Not even former Democratic Governor not former Republican Attorney General Marshall Coleman could find "surrogates". They had to buy the signatures.

The District Court simply used Wood's question as its answer.

A candidate on the ballot does not even face that hurdle when trying to win the election. No state interest is served by preventing a potential candidate for statewide office from collecting signatures him or herself statewide.

The District Court, not the Plaintiff, mis-read the Virginia Codes in question. The District Court's fundamental mis-conception of the issues at hand is reflected by its continuous use throughout all of its opinions of "independent candidate" when there *is no independent U.S. Senate candidate in Virginia, has never been an independent U.S Senate candidate, and under the severe restrictions put in place via these convoluted requirements, there never will be an independent candidate for U.S. Senate in Virginia*...unless one falls for the ruse that one can be a candidate and not be on the ballot so anyone can vote for him or her.

Addition indications of the District Court's fundamental misunderstanding of (or flat failure to recognize) the issues brought before it is found in its

Memorandum Opinion of June 22, 2000, (App at 27a), "Wood argues that the provisions require an independent candidate to gather signatures only from his or her own Congressional district or from contiguous districts." What Wood argues, among other issues, is that the *potential.* candidate. for the statewide office is not allowed to collect statewide under the Virginia Codes in question.

The District Court refers to "Wood's standards" (App. at 31a), whatever those may be, when such are hardly pertinent. Wood met all the standards accepted by the Fourth Circuit for granting a preliminary injunction.

The District Court alleges (App. at 31a) that Wood fails to consider the public interest, when in its own same Memorandum Opinion, it had quoted Wood earlier as stating "[b]ecause this is public interest litigation" (App. at 28a).

Additional indication that the District Court's refused to consider the issues brought before it are in its conclusion that an independent "recruit help in order to gather the proper number of signatures from each district" when the Court was fully aware that Wood had collected and turned in 17,532 signatures (10,000 are required), including at least 200 from each Congressional district and had not done so solo. Among the questions before the District Court was whether doubling the per-district requirement from 200 to 400 was justifiable. The District Court continues throughout all of its proceedings to refer to an "independent candidate" for U.S. Senate. There is and never has been an independent candidate for UI.S. Senate in Virginia, a significant fact ignored consistently by the District Court. *Bradley v. Mandel,* 432 U.S. 173 (1977). *Norman v. Reed,* 502 U.S. ___, 112 S. Ct.

698 (1992)

The District Court ignores or is un-aware of *Anderson v. Celebrezze*, 460 U.S. 780 (1983) in its conclusion to its Memorandum Opinion of June 22, 2000, (App at 30a) "this [getting help gathering signatures] may be a difficult burden, depending upon the political organization and financial resources (or lack thereof) enjoyed by a particular independent candidate " The District Court is treating (here, again, the Court uses the misnomer *independent candidate* when there is no independent candidate) un-equal things (a political organization such as a party and an independent effort) as if they are the same, ignoring *Anderson v. Celebrezze*.

Virginia does not comply with *Storer v. Brown*, 415 U.S. 724(1974) anyway, and the District Court does not seem to mind Virginia's Codes' ignoring it. The same applies to *Buckely v. American Constitutional Law Foundation*, 119 U.S. 636.

In *U.S. Term Limits, Inc. v. Thorten*, 115 S. Ct. 1842 (1995), the Court stated, "The Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, or to favor or disfavor a class of candidates." Zero *bona fide* independents have ever made the ballot for U.S. Senate in Virginia. They have never even been allowed to be candidates for U.S. Senate, and the two major parties in Virginia made the increasingly more restrictive ballot access regulations yet to be reviewed.

For better than six years, the state argued in *Wood v. Meadows*, 117 F. 3rd 770 (1997), that its early June deadline for filing petition signatures, more than five months before the general election *verses* 74 days before the general election *for all other federal statewide offices* was

imperative, but in the case at hand when faced with a preliminary injunction on June 21, 2000, counsel for Virginia said,

> "As to time frame, the earliest or the latest, I'm sorry, the latest the ballots have to be ready is 45 days before the November 7th election. ...since this is a Presidential election year,...the ballots must be printed not later than 45 days before the actual election. As a matter of fact, the state board cannot certify the Presidential candidate until 74 days before the general election, which is August 26th.
>
> "So as far as the preliminary injunction goes, Your Honor, the earliest that Mr. Wood could be irreparably harmed would be the days when the ballot is actually being printed. I would represent to the Court that that would not actually occur on the actual set-up of the form until August of 2000, and that the printing cannot occur until after the Presidential candidates are actually selected, And that date specified in the code, 24.2-614, is 74 days before the actual election, which works out to August 26."

In clearer English, the state maintained that it has plenty of time, at least until August 26, to worry about counting U.S. Senate petition signatures because it cannot print the ballots until after that date, anyway, and has yet another month after that before it has to have the ballots printed.

The state goes on to say in the same hearing

> "So to the extent that Mr. Wood seeks access to the ballot, that is, to have his name printed on the ballot, and wants this Court to enjoin the Commonwealth from keeping him off the ballot [not at all exactly what Wood

clearly stated he wanted enjoined at all], that just simply will not occur for approximately another two months."

Wood wanted the Court to enjoin Virginia from enforcing its new and never reviewed Codes regarding having to have 400 signatures (instead of 200) from each Congressional District, and he questioned the Constitutionality of letting some Virginians collect in fewer places and other Virginians collect in more places, purely on a geographic basis, when the race is statewide.

Wood had, anyway, satisfied the old provisions examined under *Davis*. The convoluted distribution and who-can-and-cannot-collect-where requirements are all new, issues of first impression, since *Davis*.

Irreparable harm had already been done to the voters of Virginia, to Wood's supporters, and to Wood. How much time existed before the ballots had to be printed doesn't matter a whit because the Codes that should have been under review cut off all ballot access for Wood and any independent for U.S. Senate on June 13. The state's admitting and using the two-and-a-half useless months between its early June U.S. Senate deadline and the Presidential deadline of August 26 flies in the face of its posture in *Wood v. Meadows*, 117 F.3d 770 (1997), a case not carried to the U.S. Supreme Court because Wood had been assured that even prevailing before the U.S. Supreme Court would be of no value as precedent because Virginia had changed its election code since the case was filed.

Virginia has drastically changed it ballot access codes since *Davis*, but both Virginia and the U.S. District Court attempt to use *Davis* as the

controlling precedent, and the District Court erred in applying *Davis* by writing that the Fourth Circuit had *upheld* in 1985 a Virginia Code that did not even come into existence until 13 years later.

The District Court's opinion mentions that despite the Virginia Board of Elections' sending Wood a letter informing him that his name would not be on the U.S. Senate ballot despite his having turned in 17,532 signatures (7,532 more than the 10,000 minimum),

> "This letter is not the end of the matter, however. ...the November ballot is not truly 'set in stone' until forty-five days prior to the election, when ballots must be available for absentee voting."

Whose names are going to be on that ballot, however, had already been set in stone under present Virginia Codes on June 13, 2000.

The Orwellian logic in that statement, coupled with claiming that the 4th Circuit had upheld a provision 13 years before the provision even existed, represents reversible error.

Virginia will not look at any petitions submitted after the second Tuesday in June, five months before the general election. It will never look at any petitions for U.S. Senate that do not meet the minimum requirements before or after the second Tuesday in June. Wood had met all the standards for being granted a Preliminary Injunction.

The "balance of hardships" does not exist. There is no state hardship to the state's accepting Wood as a candidate, since he did meet all the *Davis*-approved requirements. It forcefully argued it had plenty of time to print the ballot, but how long the state needs to print the ballots is not the issue. What names are to be on

those ballots is the issue.

After June 13, however, all ballot access for U.S. Senate slammed shut for all Virginians, including Wood.

There is absolutely no avenue for Wood or any independent to the ballot after early June no matter when the ballots have to be printed. That the state has, as it argued, more than ample time to print the ballots after late August indicates that the U.S. Senate deadline for filing petitions should also be in late August, in line with the deadline for all other statewide federal offices.

If a letter from the State Board of Elections saying Wood will not be on the ballot does not constitute a hardship (even beyond the bizarre codes under review) when the State Board of Elections is the sole entity (except the federal bench) that can put him on the ballot, just what short of shooting Wood *would* constitute a hardship? He has nowhere else to turn. Just where, short of far, far South, was he to go?

That the state prohibits a potential candidate for statewide office from collecting signatures him or herself statewide is a logic with which even the gods struggle in vain.

That Wood had a couple or three months (or ten or twelve months) with no place to turn for redress is not relevant. The content of the U.S. Senate ballot was set in stone June 13 no matter when those ballots would be printed.

That the state admitted its early June deadline serves no necessary administrative purpose, however, is of interest and concern, and since the state brought it up, the early deadline is again brought before the federal bench.

That deadline also coincides with the major parties' conventions/primaries, effectively cutting off all U.S.

Senate ballot access five months before the general election, once again leaving the citizens of Virginia with a like-it-or-lump-it choice, herding them into only the same two possible places five months before the general election, certainly encroaches on their First Amendment right of freedom of association.

That 94% of the U.S. Senate races in 2000 had alternatives on the U.S. Senate ballot and Virginia did not (and never has had) creates fair doubt about the legitimacy of Virginia ballot access restrictions (see *Bradley v. Mandel*, 432 U.S. 173 [1977]).

The state put forth no justification of its burden on independents and Wood, contrary to *Anderson v. Celebrezze*. The state did not demonstrate or offer any important regulatory interests...save preserving the U.S. Senate ballot for only Democrats and Republicans... (see *Williams v. Rhodes*, 393 U.S. 23, 32 [1968]; *Reynolds v. Sims*, 377 U.S. at 555, 565 [1965]; and *Board of Estimate v. Morris*, 498 U.S. 23 [1989]).

The District Court used *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), but did not apply it to the case at hand where Wood provided substantive affidavits from officers of every third party in Virginia (where third parties are treated the same before the law as are independents, contrary to *Storer v. Brown*) and from a major independent, while the state provided only one affidavit, one telling how many registered voters are in Virginia, giving two figures some 225,000 apart. The preponderance of the evidence tilted heavily in Wood's favor. Wood should have prevailed in his Motion for Summary Judgment.

That he did not far departs from the accepted and usual course of judicial procedure.

Both the District Court and the 4th Circuit ignored

Hall v. Brown and *Storer v. Brown*, which held that a state must have procedures for both new parties and for independents.

In *U.S. Term Limits v. Thorten*, the U.S. Supreme Court quoted Webster, "Money is not made a pre-requisite — the places of Senators are wisely left open to all persons of suitable age and merit." In Virginia, the sole path to just the ballot for U.S. Senate is historically demonstrated to be through having the money ($45,000 for 15,000 signatures to get 10,000 good ones) and be a member of one of the two major parties (who do not have to submit any signatures that are ever examined by the Virginia Board of Elections). Those restrictions leave out an entire class of people: anyone not able to write a $45,000 check.

John Stevens in *U.S. Term Limits, Inc. v. Thorten* wrote, "No man who has real merit, let his situation be what it will, need despair." The Court also held that a "procedure" never impose any "substantive qualification rendering a class of potential candidates ineligible for ballot position." By most standards, a $45,000 check is substantive. Stevens did not limit his use of *class* only to whatever ones have been targeted as a group by some federal agency.

Bradley v. Mandel, 432 U.S. 173 (1977) in a *per curiam* decision held that an examination of the historic record to see if ballot access regulations to keep independents off the ballot is in order. Virginia has been exempt from that requirement.

Running contrary to the District Court's saying, "a burden upon ballot access may be sustainable as a practical matter and yet be plainly unconstitutional" is *Bullock v. Carter*, 405 U.S. 134 (1972) where the U.S. Supreme Court tied the right to vote to the right to run

and held that the mere argument of burden does not override fundamental Constitutional rights, and the Commonwealth of Virginia never argued any burden, but in fact argued it had plenty of time to include other names on the U.S. Senate ballot, in revealing it had no legitimate reason for its early June deadline, that putting Wood on the ballot with his 17,532 signatures from all across the state posed no hardship on it at all.

Among the other precedents ignored by the lower courts are *Norman v. Reed*, 502 U.S. ___, 112 S. Ct. 698 (1972) (capable of recurrence yet evading review) finding that all ballot access restrictions are un-Constitutional unless the are for a compelling reason, and the state offered no compelling reason for it new, convoluted, un-equally applied new Codes under examination, plus the state itself contends that its early June deadline serves no administrative purpose whatsoever.

McCarthy v. Brisco, 429 U.S. 1317 (1976): U.S. Supreme Court ordered a Presidential candidate on the ballot as an independent even though he had not collected a single signature.

Reagan v. State of Kansas, U.S. District Court, Kansas, not reported: Libertarian Party placed on the ballot even though it had submitted no petitions.

Fulani v. League of Women Voters, 882 F. 2nd 621 at 628, 2nd Cir. (1989) brought the concept of capable of recurrence yet evading review concept to the fore.

McInerney v. Wrightson, 421 Supp 726 (1976): An independent was placed on the U.S. Senate ballot even though he had not met the petitioning requirement, in fact had not turned in a single signature.

The lower courts' decisions run contrary to this Court's recognition that disenfranchisement occurs when one is forced to execute an ineffective ballot the same as

when one is entirely denied the right to vote, *Reynolds v. Sims*, 377 U.S. at 555, 565 (1965). In *Williams v. Rhodes*, 393 U.S. 23, 32 (1968), this Court directed that governments administer the franchise as a vehicle for the people's voice rather than be a mechanism for entrenching interests, parties, or particular points of view, as captured by Justice White in *Board of Estimatse v. Morris*, 489 U.S. 23, 32 (1989).

The Virginia Codes under scrutiny are formulated by only the two major parties, and the regulations serve only to foster and perpetuate their solitary lock on ballot access in Virginia and to manacle the democratic process.

Also in Williams, 393 U.S. at 32, the First Amendment neutrality principle...that the state cannot favor certain political parties, is violated by the Board's slamming shut all ballot access immediately after the major parties have named their candidates a full 150 days before the general election. Suppose the voters like neither of them, five months before the election?

The Fourth Circuit took at most one day, after an inordinately long time getting the case up from District Court (in the same building), to review the case.

The lower courts' decisions are in conflict with the Equal Protection Clause of the Fourteenth Amendment and with the Freedom of Association Clause of the First Amendment. Their decisions conflict with and contrary to the afore mentioned Supreme Court decisions. The Virginia State Codes in question are in conflict with and contrary to Supreme Court precedent.

REASONS FOR GRANTING THE PETITION

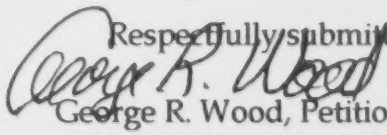
Among and in addition to the afore-mentioned special and important reasons this Court should grant this Writ of *Certiorari* are

1. Such decisions by the 4th Circuit depart from accepted and usual course of judicial proceedings and decisions, and they sanction such a departure by the lower courts, specifically by ignoring Constitutional issues of first impression and by mis-reading, then mis-applying what the District Court claimed to be the controlling case.
2. The 4th Circuit's decision conflicts with relevant, aforementioned decisions by the U.S. Supreme Court, among the *Bush v. Gore* and *Anderson v. Celebrezze* concerning First and Fourteenth Amendment rights abridged by the Virginia Codes under review
3. The public importance of these issues affects and ranges far beyond the interests of the parties to this case.
4. U.S.C. 42 (1983) applies

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Fourth Circuit should be reversed.

Respectfully submitted,



George R. Wood, Petitioner
P.O. Box 195, Woolwine, Va. 24185
(540) 930 2383; 930 2939 (304) 792 7098, x 275

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Filed June 22, 2000

GEORGE R. "TEX" WOOD

Plaintiff

v.

CA # 3:00CV335

CAMERON QUINN, SECRETARY,
STATE BOARD OF ELECTIONS

Defendant

ORDER

THIS MATTER is before the Court on the following pending Motions brought by Plaintiff GEORGE R. "TEX" WOOD: (1) a Motion for Preliminary Injunction, and (2) a Motion to Expedite Complaint for Declaratory and Injunctive Relief. For the reasons discussed in the accompanying Memorandum Opinion, the Motion for Preliminary Injunction is DENIED. The Motion to Expedite Complaint for Declaratory and Injunctive Relief is GRANTED.

Let the Clerk send s copy of this Order to all Counsel of record.

And it is SO ORDERED.

(X) James R. Spencer
U.S. District Judge

June 22, 2000

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Filed Jul 17 2000

GEORGE R. "TEX" WOOD

Plaintiff

I. CA # 3:00CV335

CAMERON QUINN, SECRETARY,
STATE BOARD OF ELECTIONS

Defendant

ORDER

THIS MATTER is before the Court on the following Motions: (1) a Motion for Summary Judgment, brought by Defendant CAMERON QUINN (herein "Quinn"); (2) a cross Motion for Summary Judgment, brought by Plaintiff GEORGE R. "TEX" WOOD (herein "Wood"); and (3) a Motion to Expedite Motion for Summary Judgment, brought also by Wood. For the reasons discussed in the accompanying Memorandum Opinion, these motions are resolved as follows:

1. Quinn's Motion for Summary Judgment is GRANTED.

2. Wood's Motion for Summary Judgment is DENIED.

3. Wood's Motion to Expedite Motion for Summary Judgment is GRANTED.

The Court hereby provides NOTICE to the Plaintiff that he may appeal this Order to the United States Court of Appeals for the Fourth Circuit by filing a notice of appeal with the Clerk of this Court no later than thirty days after the date on which this Order is entered.

Let the Clerk send a copy of this Order to all counsel of record.

And it is so Ordered.

July 17, 2000

(X) James R. Spencer
U.S. District Judge

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Filed July 17, 2000

GEORGE R. "TEX" WOOD
Plaintiff.

Civil Action No.3:00CV335

vs

CAMERON QUINN, SECRETARY,
STATE BOARD OF ELECTIONS
Defendant.

MEMORANDUM OPINION

THIS MATTER is before the Court on the following pending Motions: (1) a Motion for Summary Judgment, brought by Defendant CAMERON QUINN (herein "Quinn"); (2) a cross- Motion for Summary Judgment, brought by Plaintiff GEORGE R. "TEX" WOOD (herein "Wood"): and (3) a Motion to Expedite Motion for Summary Judgment, brought also by Wood. For the reasons discussed below, these motions are resolved as follows:

1. Quinn's Motion for Summary Judgment in GRANTED.
2. Wood's Motion for Summary Judgment is DENIED.
3. Wood's Motion to Expedite Motion for Summary Judgment is GRANTED.

I. Background

This case concerns the efforts of an independent candidate to get onto Virginia's ballot for the upcoming race for the office of United States Senator. Wood, a resident of Stuart, Virginia in Patrick County, has collected signatures from each of Virginia's 11 Congressional districts in an attempt to qualify for inclusion of the November 7, 2000 ballot as an independent candidate for Senate. (Compl. 1.). Wood takes issue with two provisions in the Code of Virginia that apply to independent candidates for office. Virginia Code 24.2-506 states: The name of any candidate for any office, other than a party nominee, shall not be printed upon any official ballots provided for the election unless he shall file along with his declaration of candidacy petition therefor, on a form prescribed by the State Board, signed by the number of qualified voters specified below after January 1 of the year in which the election is held and listing the residence address of each such voter. **Each signature on the petition shall have been witnessed by a person who is himself a qualified voter for the office for which he is circulating the petition and, in the case of a statewide office, is a resident of the same or a contiguous congressional district as the voter whose signature is witnessed,** and whose affidavit to the effect appears on each page of the petition. Va. Code Ann. 24.2-506 (Mickie 1950) (emphasis new). Virginia Code 24.2-501(1) requires independent candidates for the United States Senate to submit at least 10,000 signatures, including at least 400 signatures from each of the eleven Congressional districts. Id. 24.2-506(1). Wood has failed to collect at least 400 signatures in two of the eleven districts. Wood brought a Complaint naming Quinn in her capacity as Secretary of the State Board of Elections (herein "Virginia")1 on May 26. 2000, seeking

declaratory and injunctive relief. R. at. 1. The Court denied Wood's Motion for Preliminary Injunction on June 22, 2000. R. at 13. The Court granted Wood's Motion to Expedite Complaint for Declaratory and Injunctive Relief on the same day. Id.

For the purposes of this Memorandum Opinion, the Defendant is referred to variously as "Quinn" and "Virginia."

Quinn brought her Motion for Summary Judgment on June 7, 2000. R. at 6. Wood brought his own Motion for Summary Judgment and a Motion to Expedite Motion for Summary Judgment on June 23, 2000. R. at 14-17.

II. Standard of Review

A motion for summary judgment lies only where "there is no genuine issue as to any material fact" and where the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). See also Celotex Corp. v. Catrett, 477 U.S. 317,325 (1986); Haavistola v. Community Fire Co. of Rising Sun, Inc., 6F. 3d. 211,214 (4th Cir. 1993); Beale v. Hardy, 769 F. 2d 213,214 (4th Cir. 1985). The Court must view the facts and the inferences drawn there from in the light most favorable to the party opposing the motion. Ballinger v. North Carolina AGR. Extension Serv., 815 F. 2d 1001, 1004 (4th Cir.), cert. denied, 484 U.S. 897 (1987). While viewing the facts in such a manner, the Court looks to the affidavits or other specific facts to determine whether a triable issue exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,248 (1986). According to the Fourth Circuit, In determining whether summary judgment may be granted, the district court must perform a dual inquiry into the *genuineness* and

materiality of any purported factual issues. Whether an issue is genuine calls for an examination of the entire record then before the court in the form of pleadings, depositions, answers to interrogatories, admissions on file and affidavits, under Rule 56(c) and (e) .....Genuineness means that the evidence must create fair doubt; wholly speculative assertions will not suffice. A trial, after all, is not an entitlement. it exists to resolve what reasonable minds would recognize as real factual disputes.

Ross v. Communications Satellite Corp., 759 F.2d 355,364 (4th Cir. 1985) (emphasis original). Summary judgment is not appropriate if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. However, if a motion for summary judgment is "properly supported by affidavits, depositions, or answers to interrogatories, the nonmoving party may not rest on mere allegations or denials of the pleadings...[but] must respond by affidavits or otherwise and present specific facts demonstrating a triable issue of material fact." Garrett v. Gilmore, 926 F. Supp. 554,555 (W.D. Va. 1996), aff'd, 103 F.3d 117 (4th Cir. 1996).

III. Analysis

A. Cross-Motions for Summary Judgment

Although the Court has sympathy for Wood in light of his apparently earnest desire to present himself to Virginia voters as an alternative candidate for the United States Senate, Wood has misinterpreted or misunderstood both the case law applicable to ballot access measures and the language of the provisions at issue. Wood therefore cannot prevail. As Virginia notes correctly, the Supreme Court has directed courts

assessing First and Fourteenth Amendment challenges to ballot access restrictions to assess the burden placed on candidates for office, and also the interests of the state that may justify that burden. (Def.'s Mem. at 2, citing Anderson v. Celebreeze, 460 U.S. 780,789 (1983).). Reasonable, nondiscriminatory restrictions that serve important regulatory interests should generally be upheld. *Burdick v. Takushi*, 504 U.S. 428,434 (1992). In assessing the burden faced by Wood and other independent candidates in obtaining access to the Virginia ballot, it becomes necessary to dispel the notion that the provisions at issue preclude independent candidates from collecting signatures in all eleven of Virginia's Congressional districts. As the Court noted in its denial of Wood's Motion for Preliminary Injunction, the language of 24.2-506 does not require independent candidates to personally witness all signatures collected on their behalf, and therefore it is not impossible for independent candidates to collect four hundred signatures per district. The Court stated the following in its Memorandum Opinion:

Woods has misread 24.2-506 - it does not state that the candidate must live in the same district or in a district contiguous to those voters signing the petition, but rather only that *the person witnessing the signatures* must live in one of those districts. In other words, 24.2-506 does not require that independent candidate to witness every signature. It requires only that every signature be witnessed by a qualified voter who resides in that district or in a contiguous district. An independent candidate may therefore meet 24.2-506 by using several surrogates throughout the state to collect signatures on his behalf. So long as those surrogates are qualified voters and reside in the appropriate districts,

the independent candidate is able--in theory--to collect at least 400 signatures from all eleven Congressional districts even though no one district is contiguous to the other ten districts. This may be a heavy burden, but it is not an impossible one Mem. Op. III. This is no Catch-22, as suggested by Wood--the provisions at issue do not rob independent candidates of all means of obtaining the requisite number of voter signatures per district, although they clearly impose a burden more onerous than Wood might prefer.

This is not the end of the Court's inquiry, because a burden upon ballot access may be sustainable as a practical matter and yet plainly unconstitutional. As Wood has alleged violations of the First and Fourteenth Amendments, it falls to the Court to determine the appropriate level of scrutiny under which to review to the provisions at issue. In *Clements v. Fashing*, the Supreme Court considered two provisions in the Texas State Constitution that limited the ability of a current public official to become a candidate for another public office. *Clements v. Fashing*, 457 U.S. 957, 960-61 (1982). Besides discussing the intricacies of the particular restrictions in dispute, the Supreme Court set fourth binding principles that inform and constrain the Court's deliberations in this case. The Supreme Court ruled in *Clements* that under traditional equal protection principles, legislatures are presumed to have acted constitutionally; this presumption (and the deferential, rational basis scrutiny it entails) shall be discarded "only when the challenged statute places burdens upon 'suspect classes' of persons or on a constitutional right that is deemed to be 'fundamental.'" *Clements*, 457 U.S. at 963 (citing *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973)). The right of a candidate

to appear on a ballot is not fundamental and thus does not compel strict scrutiny by itself. Id.; see also *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986) (while restrictions upon ballot access impinge upon with the freedom to associate for political purposes, this freedom is not absolute and is "necessarily subject to qualification if elections are to be run fairly and effectively.") The Supreme Court acknowledged in *Clements* that strict scrutiny may be appropriate where ballot access measures exclude certain classes of candidates, such as those candidates who may be poor. *Clements*, 457 U.S. at 964-65. The Supreme Court noted, however, that in its cases upholding ballot measures that required independent candidates to demonstrate a certain level of support among the electorate, it has emphasized that the States have important interests in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in ensuring that their election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections.

Id. at 965. While states may not make it "virtually impossible' for independent candidates to get on the ballot, it does not follow that any and all burdens placed on those independent candidates trigger strict scrutiny. Id. at 965-66. The Supreme Court concluded by holding that it was necessary to examine the restrictions in that case in terms of the extent of the burdens they place upon the affected candidates. Id. at 966.

Upon due consideration, it is clear that rational basis scrutiny is appropriate in this case. Independent candidates such as Wood do not constitute a suspect class, although individual independent candidates may indeed be members of suspect classes on other grounds—

for example, an independent candidate who is also a black male. A state would probably not be permitted to impose significant restrictions upon that candidate's access to a ballot on the basis of his race (which is a suspect classification, triggering strict scrutiny)., but that state may be permitted to do so on the basis of his independent candidacy. The Supreme Court has recognized also that the right to appear on a ballot is not a fundamental right, thereby closing the only other possible avenue by which this Court might be permitted to apply strict scrutiny to the provisions at issue. Rational basis scrutiny is therefore the appropriate standard of review in this case.

As noted in *Clements*, ballot access restrictions may fail even rational basis scrutiny if those restrictions make it "virtually impossible" for an independent candidate to appear on a ballot. *Clements*, 457 U.S. at 965-66. Such unduly harsh restrictions would bear no rational relationship to the state's legitimate interests in regulating ballot access. However, the Court is satisfied that the provisions at issue here do not make it "virtually impossible" for an independent candidate for the United States Senate to get on the ballot in Virginia. An independent candidate in Virginia need only enlist the assistance of several surrogates in order to collect the required number of signatures in each Congressional district. Wood met the Virginia's 400-signature threshold in nine out of eleven Congressional districts, suggesting that the threshold in not an insurmountable barrier. Wood collected these signatures either with the help of surrogates, who did their job adequately for the most part, or he collected all of the signatures personally, which would undermine his theory that the provisions at issue prevent independent candidates from collecting

signatures anywhere other than in their own districts and in contiguous districts. Regardless of the method employed by Wood, it remains possible for independent candidates to collect at least 400 signatures in each Congressional district.

A barrier to ballot access does exist, however, requiring that this Court examine Virginia's interests under rational basis scrutiny to determine whether they justify the imposition of that barrier, no matter how slight it may prove to be in practice. The Supreme Court has held unequivocally that states may require independent or so-called "minor party" candidates to demonstrate a modicum of support among potential voters in order to qualify for a place on the ballot. See, e.g., Munro, 479 U.S. at 194-94; Anderson v. Celebreeze, 460 U.S. 780, 788-89 (1983); American Party of Texas v. White, 415 U.S. 767, 782 (1974); Jenness v. Fortson, 403 U.S. 431, 442 (1971). the line of authority rests upon the state interests recognized in Clements--in protecting the integrity of political processes from frivolous or fraudulent candidacies, in ensuring that election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections. See Clements, 457 U.S. at 965. See also Munro, 479 U.S. at 194-94; American Party, 415 U.S. at 782; Bullock v. Carter, 405 U.S. 134, 145 (1972); Jenness, 403 U.S. at 442. The Supreme Court stated powerfully in *Lubin v. Panish* that a state's interest "in keeping its ballots within
manageable, understandable limits is of the highest order." Lubin v. Panish, 415 U.S. 709, 714-715 (1974). It is therefore beyond question that states have an important interest in regulating ballot access. Virginia and Wood enter into a duel of sorts as to ballot access systems in

other states; without delving into every case cited by the parties, the Court recognizes that a wide range of ballot access measures may bear a rational relation to legitimate state interests in regulating ballot access. In determining whether the provisions at issue satisfy rational basis scrutiny, however, the Court must defer to decisions of the Supreme Court and the Fourth Circuit that have upheld ballot access systems with signature requirements that are more onerous than those faced by Wood. See, e.g., American Party, 415 U.S. at 767; (upheld system that forbid voters from signing more than one petition, and from voting in a party primary after signing an independent candidate's petition); Jenness, 403 U.S. at 431 (upheld system that required independent candidates to obtain the signatures of no less than 5% of eligible voters, in the same amount of time afforded to candidates in party primary); Socialist Workers Party v. Henchler, 890 F .2d 1303 (4th Cir. 1898) (upheld system that barred voters from both signing an independent candidate's petition and voting in a party primary). These systems do not place a cap upon the number of candidates who may appear on a ballot, but rather limit ballot access to any and all candidates who demonstrate a level of voter support deemed sufficient by the state legislatures. The Fourth Circuit upheld the 10,000-signature requirement specifically in *Libertarian Party of Virginia v. Davis*, ruling that such a requirement-which, in effect, asks the independent candidates gather the signatures of 0.5% of all eligible Virginia voters in order to get on the ballot--was a "minimal impediment." Libertarian Party of Virginia v. Davis, 766 F. 2d865, 868 (4th Cir. 1985). Virginia's 10,000-signatures threshold for independent candidates therefore passes constitutional muster under the rational basis standard.

The distributional requirement of 400 signatures per Congressional district also bears a rational relationship to Virginia's legitimate interests in regulating ballot access. Wood argues that the geographic distribution of his supporters is irrelevant to his ultimate chances of success; he concedes at oral argument, however, that any candidate for the United States Senate must garner votes from multiple areas within Virginia in order to prevail. This makes sense, for Congressional districts are apportioned on the basis of population. No one district is so overwhelmingly more populous than the other districts as to be able to elect a Senator all by itself. This is by design. For an independent candidate to have any hope of winning a state wide race, he or she must draw support from across the state. If an independent candidate cannot do so, he or she cannot prevail on Election Day. The imposition of a distributional signature requirement in addition to the 10,000 signature threshold is therefore rationally related to Virginia's legitimate interest in restricting ballot access to those candidates with a chance of winning the election. Such a requirement weeds out those individuals who, for whatever reason, are unable or unwilling to mount a campaign sufficient to capture the imaginations of voters across Virginia. No doubt may potential candidates would come forward if Virginia asked only that an individual demonstrate the support of his or her home region, but many of these candidates would enjoy little or no chance of ultimate success. Wood observes at oral argument that he has collected signatures from all eleven Congressional districts within Virginia, and the his efforts have proven deficient in only two of those districts. This Court cannot say, however, that the 400-

per-district requirement is so grossly excessive as to violate rational basis review.

This level of scrutiny is the most deferential standard a court may employ, and it does not demand perfection. As the Supreme Court stated in *Kimel v. Flordia Board of Regents*, federal courts employing rational basis review will not overturn state actions "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational." Kimel v. Flordia Bd. of Regents, __U.S.__, 120 S.Ct. 631, 646 (2000) (alteration original). Virginia's actions were rational in light of its legitimate interest in restricting ballot access, and that is all the law requires.

Wood offers several cases for the Court's consideration, but only one is apposite to the instant dispute: in *U.S. Term Limits v. Thornton*, the Supreme Court struck down an amendment to the Arkansas State Constitution which forbade candidates for Congress from appearing on the ballot if they had served three terms in the House of Representatives or two terms in the Senate. U.S. Term Limits v. Thornton, 514 U.S. 779 (1995). Wood suggests that the holding in U.S. Term Limits prohibits Virginia from "denying ballot access to any class or category of candidates by any means or methods." (Pl.'s Summ J. Mem. at 13.). Wood's reliance on *U.S. Term Limits* is misplaced, however, for the Supreme Court differentiated in that case between state efforts to require additional qualifications of candidates for Congress (which is found unconstitutional) and state efforts to regulate ballot access (which may be constitutional); the Supreme Court found that the amendment in dispute in that case was an effort to impose additional

qualifications, and rejected the amendment primarily on this basis. U.S. Term Limits, 514 U.S. at 835. While the Supreme Court barred states from denying ballot access to entire classes of candidates, the case does not say that states cannot impose any ballot access restrictions on independent candidates. See generally Id.

The Court is not without sympathy for Wood's position. Perhaps other measures could be imposed in place of the provisions at issue that might serve Virginia's interests equally well. Whether to explore such alternatives is a decision for the Virginia General Assembly, however; the Court cannot overturn portions of Virginia's ballot access system that satisfy rational basis scrutiny simply because independent candidates prefer a lesser burden. Quinn is clearly entitled to judgment as a matter of law, and there are no genuine issues of material fact. For these reasons, Quinn's Motion for Summary Judgment is GRANTED, and Wood's cross-Motion for Summary Judgment is DENIED.

B. Motion to Expedite Motion for Summary Judgment

As this motion is uncontested and the instant Memorandum Opinion resolves this matter, Wood's Motion to Expedite Motion for Summary Judgment is GRANTED.

IV. Conclusion

For the reasons discussed above, the motions are resolved as follows;

1. Quinn's motion for Summary Judgment is GRANTED.
2. Wood's motion for Summary Judgment is DENIED.

3. Wood's Motion to Expedite Motion for Summary Judgment is GRANTED.

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record. And it is SO ORDERED.

(X)James R. Spencer
UNITED STATE DISTRICT JUDGE

DATE July 17, 2000

Appendix D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Decided Sept. 8, 2000
filed Oct. 17, 2000

No. 00-2015

GEORGE R. "TEX" WOOD
Plaintiff-Appellant

v.

CAMERON QUINN, Secretary of the
Board of Elections, Commonwealth of Virginia
Defendant-Appellee

Appeal from the United States District Court for the Eastern District of Virginia at Richmond. James R. Spencer, District Judge. (CA-00-335-3)

Submitted: Sept. 7, 2000 Decided: Sept. 8, 2000

Before Niemeyer, Motz, and Traxler, Circuit Judges

Affirmed by unpublished per curiam opinion.

George R. "Tex" Wood, Appellant Pro Se. Mark L. Early, Attorney General of Virginia, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit See Local Rule 36©

Per Curiam:

George R. "Tex" Wood appeals from the district court's order granting summary judgment for Defendant in Wood's action challenging the constitutionality of Virginia's requirements for inclusion on the ballot as an independent candidate for the United States Senate in the general election in Virginia. In light of the time-sensitive nature of the issues, we have granted Wood's motion to

expedite consideration of the appeal. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny Wood's motion for an injunction pending appeal and affirm on the reasoning of the district court. See *Wood v. Quinn*, No. CA-00-335-3 (E. D. Va. July 17, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Appendix E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed October 17, 2000

No. 00-2015
CA-00-335-3

GEORGE R. "TEX" WOOD
Plaintiff-Appellant

v.

CAMERON QUINN, Secretary of the
Board of Elections, Commonwealth of Virginia
Defendant-Appellee

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied

For the Court,
/s/Patricia S. Connor
Clerk

October 17, 2000

Appendix F

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed October 25, 2000

No. 00-2015
CA-00-335-3

GEORGE R. "TEX" WOOD
Plaintiff-Appellant

v.

CAMERON QUINN, Secretary of the
Board of Elections, Commonwealth of Virginia
Defendant-Appellee

MANDATE

The judgment of the Court dated 9/8/00 takes effect today.

(X) Patricia S. Connor
Clerk

Appendix G

Virginia Code 24.2-506 (1). Petition of qualified voters required; number of signatures required; certain towns excepted. — The name of any candidate for any office, other than a party nominee, shall not be printed upon any official ballots provided for the election unless he shall file along with his declaration of candidacy a petition therefor, on a form prescribed by the State Board, signed by the number of qualified voters specified below after January 1 of the year in which the election is held and listing the residence address of each such voter. Each signature on the petition shall have been witnessed by a person who is himself a qualified voter for the office for which he is circulating the petition and, in the case of a statewide office, is a resident of the same or a contiguous congressional district as the voter whose signature is witnessed, and whose affidavit to that effect appears on each page of the petition.

Each voter signing the petition shall provide on the petition his social security number, if any; however, noncompliance with this requirement shall not be cause to invalidate the voter's signature on the petition.

The minimum number of signatures of qualified voters required for candidate petitions shall be as follows:

1. For a candidate for the United States Senate, Governor, Lieutenant Governor, or Attorney General, 10,000 signatures, including the signatures of at least 400 qualified voters from each congressional district in the Commonwealth;

....

Appendix H

Virginia Code 24.2-507 (1). Deadlines for filing declarations and petitions of candidacy. — For any office, declarations of candidacy and the petitions therefore shall be filed according to the following schedule:

1. For a general election in November, by 7:00 p.m. on the second Tuesday in June;

....

Appendix I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Filed June 22, 2000

GEORGE R. "TEX" WOOD

Plaintiff

II. CA # 3:00CV335

CAMERON QUINN, SECRETARY,
STATE BOARD OF ELECTIONS

Defendant

MEMORANDUM OPINION

THIS MATTER is before the Court on the following pending Motions brought by Plaintiff GEORGE R. "TEX" WOOD: (1) a Motion for Preliminary Injunction, and (2) a Motion to Expedite Complaint for Declaratory and Injunctive Relief. For the reasons discussed below, the Motion for Preliminary Injunction is DENIED. The Motion to Expedite Complaint for Declaratory and Injunctive Relief is GRANTED.

I. Background

This case concerns the efforts of an independent candidate to get onto Virginia's ballot for the upcoming race for the office of United States Senator. Wood, a resident of Stuart, Virginia in Patrick County, has collected signatures from each of Virginia's 11 Congressional districts in an attempt to qualify for inclusion on the November 7, 2000 {sic} ballot as an independent candidate for Senate.

(Compl. 1.) Wood takes issue with two provisions of the Virginia Code that deal with the inclusion of independent candidates on statewide ballots; these provisions are discussed in detail below. Wood filed a Complaint against Quinn in her capacity as Secretary of the State Board of Elections on May 26, 2000, seeking declaratory and injunctive relief. R. at 1. Wood brought a Motion to Expedite Complaint for Declaratory and Injunctive Relief. R. at 2,3.

II Standard of Review

In considering whether to issue a preliminary injunction, the Court must consider (1) the likelihood of irreparable harm to the plaintiff without preliminary injunction; (2) the likelihood of harm to defendants if the preliminary injunction is granted; (3) the likelihood that the plaintiff will succeed on the merits; and (4) the public interest. *See Manning v. Hunt*, 119 F. 2nd 254, 263 (4th Cir. 1997); see also *Blackwelder Furniture Co. Mfg. Co.*, 550 F 2nd 189, 195-96 (4th Cir. 1977). The first two factors, i.e., the "balance of hardships," are paramount and must be considered first. *Manning*, 119 F3rd at 263. If the balance of hardships "tips decidedly" in favor of the plaintiff, then the court may issue a preliminary injunction so long as the plaintiff raises "questions going to the merits so serious, substantial, difficult, and doubtful, as to make them fair ground for litigation and thus more deliberative investigation." Id. (quoting *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F 2nd 353, 359 (4th Cir. 1991). If the balance "does not tip decidedly," then the plaintiff must make

a strong showing on the merits of the case. *Manning*, 119 F 3rd at 263. The Court must consider the public interest only after it has balanced the hardships and assessed the plaintiff's likelihood of success on the merits. *Id.*

III Analysis

A. Motion for Preliminary Injunction

Wood asks that the Court enjoin Virginia from enforcing two provisions of the Virginia Code that apply to independent candidates for office.1 (Mot. 1.) Virginia Code 24.2-506 states:

> The name of any candidate for any office, other than a party nominee, shall not be printed upon any official ballots provided for the election unless he shall file along with his declaration of candidacy a petition therefore, on a form prescribed by the State Board, signed by the number of qualified voters specified below after January 1 of the year in which the election is held and listing the residence address of each such voter. **Each signature on the petition shall have been witnessed by a person who is himself a qualified voter for the office for which he is circulating the petition and, in the case of a statewide office, is a resident of the same or a contiguous congressional district as the voter whose signature is witnessed**, and whose affidavit to that effect appears on each page of the petition.

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1. Much of this motion must be inferred from the complaint itself, as Wood has not submitted a separate Memorandum in Support.

Va. Code Ann 24.2-506 (Michie 1950) (emphasis new). Virginia Code 24.2-506(1) requires independent candidates for the United States Senate to submit at least 10,000 signatures, including at least 400 signatures from each of the eleven Congressional districts. Id. 24-2.506(1).

Wood contends that these two provisions violate the First Amendment's guarantee of freedom of association, the Fourteenth Amendment's guarantee of equal protection, and that no compelling state interest exists to support these provisions. (Compl. 3.) Wood contends that the provisions should be viewed with strict scrutiny because of alleged constitutional violations. (*Id.* 19.). According to Wood, the provisions pose a Catch-22 by requiring independents to collect at least 400 signatures from each Congressional district, and yet allegedly impose an obstacle which makes doing so impossible. (*Id.* 14.). Wood argues that the provisions require an independent candidate to gather signatures only from his or her own Congressional district or from contiguous districts; as no one district is contiguous to all ten others, Wood maintains that it is impossible (and thus a denial of equal protection) for one candidate to collect signatures from all eleven districts. (Id. 14(a)(c).). Wood argues also that the 400-per-district requirement is unnecessary and unfair, because "[t]he location of signers of petitions in no way indicates probability of eventual victory or even of support across the state. To assert that a petitioner must demonstrate statewide support before even getting on the ballot would require of an Virginia voter to conduct an expensive, statewide campaign prior to even getting on the ballot, and such is unreasonable...." (Id. 14(b)[emphasis original]). Wood contends that party nominees needn't meet such requirements, but that they

are nonetheless in a better position to do so due to their party organizations. (Id. 14(d).). Wood argues finally that the provisions allow one voter to negate the rights of many other voters, because an independent candidacy may die for failure to obtain at least 400 valid signatures in all eleven Congressional districts, and the dreams of the signers would presumably die with it. *(Id.* 14(f).).Wood insists that he is entitled to a preliminary injunction "if he is likely to succeed on the merits of his claims, and he establishes the possibility of irreparable injury, or if he raises serious questions regarding his claims and shows that the balance of hardships tips sharply in his or her favor." (*Id.* 15.) No cases are cited for this standard, which Wood alleges is satisfied in this case. (*Id.*). He contends that "[f]or all the reasons set forth in this complaint," he has a high probability of success on the merits of his First and Fourteenth Amendment claims. (Id. 16.). Woods [sic] contends next that the provisions in question cannot be justified because "less drastic" measures would serve state interests in this area, and because the provisions impose a debilitating burden upon independent candidates. (Id. 17-18.). As evidence of this latter proposition, Wood states that 'no un-aligned independent, let alone the plaintiff, has ever overcome the burden and made the ballot for U.S. Senate...even [when] the 400-signature-per-Congressional-District requirement was *half* what Virginia Code 24.2-506 now requires." (ID. 20 [emphasis original].). Woods [sic] concludes that injunctive relief is appropriate, and that no security should be required '[b]ecause this is public interest litigation." (Id. 21.).

An examination of the statute and of the proper standard of review demonstrates that Wood cannot prevail. The Court turns first to the balance of hardships,

which is its first consideration under the four-part test set forth in *Manning* and *Blackwelde*r. Wood contends at oral arguments that [he] has been informed by a letter from the State Board of Elections that he cannot be included on the November ballot for failure to comply with 24.2-506. This letter is not the end of the matter, however. As noted by counsel for Quinn, the November ballot is not truly "set in stone" until forty-five days prior to the election, when printed ballots must be made available for absentee voting. *See* Va. Code Ann 24.2-612 (Michie 1950). Receipt of a disqualification letter therefore does not tip the balance of hardships so decidedly in Wood's favor as to preclude any examination of the remaining twp prongs of the *Manning/Blackwelder* test for a preliminary injunction.

Upon considering these remaining prongs (i.e., the movant's likelihood of success on the merits and the public interest), it is apparent that a preliminary injunction cannot issue, for Wood is unlikely to prevail upon the merits of his claim. Woods has misread 24.2-506 – it does not state that *the candidate* must live in the same district or in a district contiguous to those voters signing the petition, but rather only that *the person witnessing the signatures* must live in one of those districts.

In other words, 24.2-506 does not require the independent candidate to witness every signature. It requires only that every signature be witnessed by a qualified voter who resides in that district or in a contiguous district. An independent candidate may therefore meet 24.2-506 by using several surrogates throughout the state to collect signatures on his behalf. So long as those surrogates are qualified voters and reside in appropriate districts, the independent candidate is able-- in theory--- to collect at least 400 signatures from all

eleven Congressional districts even though no one district is contiguous to the other ten districts. This may be a heavy burden, but it is not an impossible one. In light of Wood's clear mis-reading of the statute, the Court need not turn to the public interest underlying the provisions at issue. Wood is unlikely to prevail on the merits, and thus a preliminary injunction cannot issue.

It should be noted that Woods does not apply the proper standard governing the issuance of preliminary injunctive relief. As noted in Section II, the Court must consider (1) the likelihood of irreparable harm to the plaintiff without a preliminary injunction; (2) the likelihood of harm to defendants if the preliminary injunction is granted; (3) the likelihood that the plaintiff will succeed on the merits; and (4) the public interest. *See Manning v. Hunt*, 119 F2nd 254, 263 (4th Cir. 1977*); see also Blackwelder Furniture v. Seilig Mfg. Co.*, 550 F2nd 189, 195-96 (4th Cir. 1977). This standard is well established. Wood holds himself instead to a much lesser standard, which reportedly requires the issuance of a preliminary injunction if: (1) he is likely to succeed on the merits of his claims; and (2) he establishes the *possibility* of irreparable injury; or (3) if he raises serious questions regarding his claims and shows that the balance of hardships tips sharply in his or her favor. (Compl. 15.). The Fourth Circuit has not adopted this standard, which would give the movant a considerable advantage if followed.2 This standard would allow a preliminary injunction to be issued if, in addition to satisfying the other requirements, the movant establishes *any* remote

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2.Even under this standard, however, a preliminary injunction could not issue because Wood is unlikely to prevail on the merits of his claim.

chance of irreparable injury. This is an easier showing of injury than that required by *Manning* and *Blackwelder*. Wood's standard also fails to consider the public interest, which – especially in a case such as this, involving election law – may well be a integral part of a court's inquiry when determining whether injunctive relief is appropriate.

For these reasons, the Motion for Preliminary Injunction is DENIED.

B. Motion to Expedite Complaint for Declaratory and Injunctive Relief

Wood moves to expedite the consideration of this complaint, given the upcoming election on November 7, 2000. (Mot. 1.). He contends that this matter is time sensitive "and subject to being made moot by the passage of time, with subsequent and additional irreparable harm to the voters of Virginia and to the plaintiff." (*Id.*). This motion is unopposed, and shall therefore be GRANTED.

IV. Conclusion

The Court is not without sympathy for Wood's position. As drafted, the provisions at issue require an independent candidate to recruit help in order to gather the proper number of signatures from each district. This maybe a difficult burden, depending on the political organization and financial resources (or lack thereof) enjoyed by a particular independent candidate. It is not an impossible burden, however, and thus a preliminary injunction cannot issue.

For the reasons discussed above, the Motion for Preliminary Injunction is DENIED. The Motion to Expedite Complaint for Declaratory and Injunctive Relief is GRANTED.

Let the Clerk send a copy of this MemorandumOpinion to all counsel of record.

And it is so ORDERED.

(X)James R. Spencer
UNITED STATES DISTRICT JUDGE

Date June 22, 2000